

1
2 **BEFORE THE FEDERAL ELECTION COMMISSION**

3
4 In the Matter of)
5)
6 MUR 6254) **CASE CLOSURE UNDER THE**
7 Dr. Lowry Election Committee) **ENFORCEMENT PRIORITY SYSTEM**
8 and Robert Lowes, as Treasurer)
9)

10
11 **GENERAL COUNSEL'S REPORT**

12
13 Under the Enforcement Priority System, matters that are low-rated

14
15 : are forwarded to the Commission with a recommendation for dismissal. The
16 Commission has determined that pursuing low-rated matters, compared to other higher-
17 rated matters on the Enforcement docket, warrants the exercise of its prosecutorial
18 discretion to dismiss these cases. The Office of General Counsel scored MUR 6254 as a
19 low-rated matter.

20 In this matter, the complainant, Scott Yeldell, alleges that the Dr. Lowry Election
21 Committee and Robert Lowes, in his official capacity as treasurer (collectively "the
22 Committee"), violated the Federal Election Campaign Act of 1971, as amended ("the
23 Act"), by: (1) failing to file a 2009 Year End Report, noting that committee
24 disbursements during the reporting period included a \$3,500 filing fee associated with the
25 Republican Party of Texas, and expenses associated with airing and producing a radio
26 advertisement and hosting a website; (2) using a corporate medical office for
27 campaigning and advertisements; and (3) soliciting and/or accepting excessive and
28 prohibited contributions.

10044273706

1 In response to the complaint, Dr. Lowry asserts that the Committee timely filed its
2 2009 Year End Report, which the Committee was required to file by January 31, 2010.¹
3 The Report disclosed unitemized disbursements totaling \$13,235 and an itemized
4 disbursement of \$300 for advertising. In response to the allegation that the Committee
5 impermissibly used a corporate medical office for campaigning and advertisement,
6 Dr. Lowry states that he advised people to come to his office to pick up materials from
7 his pick-up truck. Finally, in response to the allegation that the Committee solicited and
8 accepted excessive and prohibited contributions, Dr. Lowry notes that the Committee
9 understood that accepting a \$5,000 individual contribution would have been a violation
10 of law, but asserts that "the note was placed in its manner so as to be symmetric to the
11 \$5.00 dollars."² Dr. Lowry further asserts that: (1) at no time was a contribution over
12 \$2,400 per person received by the Committee; (2) while the Committee solicited
13 contributions and support from "businesses and organizations," those terms do not
14 necessarily refer to prohibited sources; and (3) the Committee did not accept
15 contributions from corporations, and had to return one contribution check that was drawn
16 on a corporate account.³

¹ The Committee's 2009 Year End Report, dated January 28, 2010, was received by the Commission on February 5, 2010.

² The language used in the solicitation cited in the complaint is as follows:

Financial Support – Dr. Lowry for Congress also needs financial contributions. Every dollar helps and anything you can do is appreciated, whether you give \$5, \$50, \$500 or \$5,000. You can donate on our website at www.drlowryforcongress.com. Please also let us know if you know of a business or other organization who might be interested in providing a financial contribution.

³ The Committee's disclosure reports appear to reflect that it did not retain any excessive or prohibited contributions. The Committee does note that it received a contribution check, which was drawn on a corporate account, but the check was returned by the Committee and later replaced with a personal check by the contributor.

10044273707

1 Although a committee may not have received an excessive or prohibited
2 contribution, the mere solicitation of excessive or prohibited contributions is a violation
3 of the Act. Specifically, 2 U.S.C. § 441i(e)(1)(A) prohibits federal candidates and their
4 agents from soliciting, receiving, directing, transferring or spending funds in connection
5 with an election for federal office, including funds for federal election activity, unless the
6 funds are subject to the limitations, prohibitions and reporting requirements of the Act.
7 With respect to the allegation that the Committee impermissibly used Dr. Lowry's
8 corporate medical office for campaigning and advertisements in violation of 2 U.S.C.
9 § 441b, Dr. Lowry's response indicates that he advised people to come to his office to
10 pick up materials from his pick-up truck, and we currently do not have information that
11 suggests otherwise.

12 Thus, it appears that the Committee solicited contributions that were not subject
13 to the limitations and prohibitions of the Act, but nevertheless did not appear to retain any
14 excessive or prohibited contributions as a result of its solicitation. Accordingly, in light
15 of the fact that the Committee apparently did not retain any illegal contributions and was
16 only five days late in filing its 2009 Year End Report, and in furtherance of the
17 Commission's priorities and resources, and relative to other matters pending on the
18 Enforcement docket, the Office of General Counsel believes that the Commission should
19 exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470
20 U.S. 821 (1985). Additionally, this Office recommends reminding the Committee of the
21 solicitation limitations under 2 U.S.C. § 441i(e)(1)(A) and the timely filing requirements
22 under 2 U.S.C. § 434(a).

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission dismiss MUR 6254, close the file, and approve the appropriate letters. Additionally, this Office recommends reminding Dr. Lowry Election Committee and Robert Lowes, in his official capacity as Treasurer, of the solicitation limitations under 2 U.S.C. § 441i(e)(1)(A) and timely filing requirements under 2 U.S.C. § 434(a).

Thomasenia P. Duncan
General Counsel

5/20/10
Date

BY: Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration

Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

Tracey L. Ligon / 6/2/08
Tracey L. Ligon
Attorney

10044273709